

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

BENJAMIN M. KNIPP,)	
)	
Plaintiff,)	
)	Case No. 2:12-cv-00465-RLM-APR
v.)	
)	
CSX TRANSPORTATION, INC.,)	
)	

PLAINTIFF’S OBJECTIONS TO DEFENDANT’S JURY INSTRUCTIONS

COMES NOW the Plaintiff, BENJAMIN M. KNIPP, by his attorneys, HARRINGTON, THOMPSON, ACKER & HARRINGTON, LTD., and submits the following objections to Defendant’s Proposed Jury Instructions:

DEFENDANT’S INSTRUCTION NO. 1.

Objection. Defendant has already stipulated to negligence, thus the instruction not applicable in light of the stipulations.

DEFENDANT’S INSTRUCTION NO. 2.

No objection.

DEFENDANT’S INSTRUCTION NO. 3.

Objection. This is not a pattern jury instruction, moreover negligence has already been stipulated to thus the jury need not find “by a preponderance” that the defendant was negligent. The Court should give Plaintiff’s proposed instruction no. 1 (Seventh Circuit Pattern FELA Instruction 9.01).

DEFENDANT'S INSTRUCTION NO. 4.

Objection. This is not a pattern instruction. The issue of causation is covered by Plaintiff's instruction no. 2 (Seventh Circuit FELA Pattern Instruction 9.02). Defendant cites CSX Transp., Inc. v. McBride, 131 S. Ct. 2630 (2011) as authority for this instruction. The McBride case was taken from the Seventh Circuit to the Supreme Court on the issue of whether Seventh Circuit FELA Pattern Instruction 9.02 was a proper instruction to the jury on FELA causation. The Court held it was an accurate statement of law. Pursuant to McBride, Seventh Circuit FELA Pattern Instruction 9.02 should be given herein and not this instruction which is apparently only the product of defense counsel own creative writing.

DEFENDANT'S INSTRUCTION NO. 5.

Objection. See objection to instruction no. 4.

DEFENDANT'S INSTRUCTION NO. 6.

Objection. Argumentative, non-pattern jury instruction on FELA causation. Moreover, this instruction is duplicative of Seventh Circuit FELA Pattern Instruction 9.02. See objection to instruction no. 4.

DEFENDANT'S INSTRUCTION NO. 7.

Objection. Argumentative, non-pattern jury instruction on FELA causation. Moreover, this instruction is duplicative of Seventh Circuit FELA Pattern Instruction 9.02. See objection to instruction no. 4. Moreover, Defendant's citation of Nicholson v. Erie R.R. Co., 253 F.2d 939 (2d Cir. 1958) is inapposite for several reasons, most notably because the plaintiff in Nicholson sustained injury off-duty. Here, Plaintiff was on-duty and working. See Szekeres v. CSX Transp., Inc., 731 F.3d 592 (6th Cir. 2013) (*The Court's citation of Nicholson in McBride was only to point out that there are no unforeseeable plaintiffs in FELA cases as the statute weeds out the injuries most likely to bear only a tenuous relationship to railroad negligence, namely, those occurring outside the workplace*).

DEFENDANT'S INSTRUCTION NO. 8.

Objection. This instruction discusses negligence, but negligence has already been stipulated to by Defendant. This instruction is irrelevant and would only lead to jury confusion.

DEFENDANT'S INSTRUCTION NO. 9.

Objection. See objection to instruction no. 8.

DEFENDANT'S INSTRUCTION NO. 10.

Objection. This instruction is duplicative of Plaintiff's proposed instruction no. 1 (Seventh Circuit Pattern FELA Instruction 9.01). The form Seventh Circuit FELA instruction covers the issue and should be given.

DEFENDANT'S INSTRUCTION NO. 11

Objection. This instruction discusses contributory negligence on behalf of the Plaintiff, which has been waived by Defendant. It is duplicative of Plaintiff's proposed instruction no. 3 (Seventh Circuit FELA Instruction 9.04). This instruction would only lead to jury confusion. The form Seventh Circuit FELA instruction covers the issue and should be given.

Respectfully submitted,

By: /s/ Robert E. Harrington, III
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CERTIFICATE OF SERVICE

I hereby certify that on ***August 19, 2014*** a copy of the foregoing:

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S JURY INSTRUCTIONS

was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

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